

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1877

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Dickinson, Beth Gaines, and Pan)
(Coauthor: Senator Gaines)

February 19, 2014

An act to add Title 22.1 (commencing with Section 100600) to the Government Code, relating to health care coverage, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, as amended, Cooley. California Vision Care Access Council.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to establish an American Health Benefits Exchange to facilitate the purchase of qualified health plans by qualified individuals and small employers. PPACA prohibits an Exchange from making available any health plan other than a qualified health plan, except for certain stand-alone dental plans. Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014.

This bill would establish the California Vision Care Access Council within state government and would require that the Council be governed by a board composed of 5 members appointed by the Governor and the Legislature, as specified. The bill would prohibit a member of the board or staff to the Council from being an employee *of*, or in specified relationships ~~with~~ *with*, a health care provider or health care facility, or from benefiting financially from a decision that he or she participated in making or attempted to use his or her official position to influence, as specified. The bill would require the Council to construct, manage, and maintain a marketplace for the purchase of vision plans through participating carriers by qualified individuals and qualified employers and would require the Council to work with the Exchange to establish a direct link between the Internet Web site of the Exchange and the Internet Web site of the Council in order to connect consumers of the Exchange to the marketplace established by the Council. The bill would require the Council to refer consumer questions regarding health care eligibility and enrollment options to the Exchange, as specified.

This bill would also require the Council to establish the requirements for carrier participation in the marketplace and standards and criteria for selecting vision plans that are in the best interests of qualified individuals and employers, and imposing specified requirements on participating carriers. The bill would require a participating carrier to submit a justification for a premium increase to the Council prior to implementing the increase, and require participating carrier's to make available to consumers an electronic directory of contracting vision care providers. The bill would also enact other related provisions.

This bill would create the California Vision Care Access Trust Fund as a continuously appropriated fund, thereby making an appropriation, would authorize the Council to assess a charge on the vision plans offered by participating carriers through the Council that is reasonable and necessary to support the development, operations, and prudent cash management of the Council, and would make the implementation of the bill's provisions contingent on a determination by the board that at least \$250,000 exists in the fund. *The bill would prohibit General Fund moneys from being used for any of these purposes and would require that any costs associated with the implementation of these provisions be paid from the California Vision Care Access Trust Fund.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Vision Care Access Act.

SEC. 2. It is the intent of the Legislature to make the statutory changes to California law necessary to establish a Vision Care Access Council in California and its administrative board in a manner that is consistent with the rules, regulations, and guidance implementing the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), hereafter the federal act. In doing so, it is the intent of the Legislature to do all of the following:

(a) Provide Californians an organized, transparent marketplace for the purchase of affordable, quality vision care coverage, augmenting and supplementing the essential health benefits available through the California Health Benefit Exchange.

(b) Guarantee the availability of vision coverage through the private health insurance market to qualified individuals and employees of qualified employers.

(c) Offer specialized vision health care service plan and health insurance coverage in the individual and group markets on the basis of price, quality, and service.

(d) Meet the requirements of the federal act and all applicable federal guidance, rules, and regulations.

SEC. 3. Title 22.1 (commencing with Section 100600) is added to the Government Code, to read:

TITLE 22.1. CALIFORNIA VISION CARE ACCESS
MARKETPLACE

100600. For purposes of this title, the following definitions shall apply:

(a) “Board” means the board described in subdivision (a) of Section 100601.

(b) “Carrier” means either a private health insurer holding a valid outstanding certificate of authority from the Insurance

1 Commissioner or a health care service plan, as defined under
2 subdivision (f) of Section 1345 of the Health and Safety Code,
3 licensed by the Department of Managed Health Care.

4 (c) “Council” means the Vision Care Access Council created
5 by Section 100601.

6 (d) “Exchange” means the California Health Benefit Exchange
7 established by Section 100500.

8 (e) “Federal act” means the federal Patient Protection and
9 Affordable Care Act (Public Law 111-148), as amended by the
10 federal Health Care and Education Reconciliation Act of 2010
11 (Public Law 111-152), and any amendments to, or regulations or
12 guidance issued under, those acts.

13 (f) “Fund” means the California Vision Care Access Trust Fund
14 established by Section 100620.

15 (g) “Marketplace” means the marketplace established under
16 Section 100603.

17 (h) “Qualified individual” means an individual who is eligible
18 to purchase coverage through the Exchange.

19 (i) “Qualified employer” means an employer that is eligible to
20 purchase coverage through the Exchange.

21 (j) “Vision plan” means a specialized health care service plan
22 contract, as defined in Section 1345 of the Health and Safety Code,
23 covering vision care services or a specialized health insurance
24 policy, as defined in Section 106 of the Insurance Code, covering
25 vision care services.

26 100601. (a) There is in the state government the California
27 Vision Care Access Council, an independent public entity not
28 affiliated with an agency or department, which shall be known as
29 the Council. The Council shall be governed by an executive board
30 consisting of five members who are residents of California. Of the
31 members of the board, three shall be appointed by the Governor,
32 one shall be appointed by the Senate Committee on Rules, and one
33 shall be appointed by the Speaker of the Assembly.

34 (b) Members of the board shall be appointed for a term of four
35 years, except that the initial appointment by the Senate Committee
36 on Rules shall be for a term of three years, and the initial
37 appointment by the Speaker of the Assembly shall be for a term
38 of two years. Appointments by the Governor made on or after
39 January 1, 2016, shall be subject to confirmation by the Senate. A
40 member of the board may continue to serve until the appointment

1 and qualification of his or her successor. Vacancies shall be filled
2 by appointment for the unexpired term. The board shall elect a
3 chairperson on an annual basis.

4 (c) (1) Each person appointed to the board shall have
5 demonstrated and acknowledged expertise in at least two of the
6 following areas:

7 (A) Individual health care coverage.

8 (B) Small employer health care coverage.

9 (C) Health benefits plan administration.

10 (D) Health care finance.

11 (E) Administering a public or private health care delivery
12 system.

13 (F) Purchasing health plan coverage.

14 (2) Appointing authorities shall consider the expertise of the
15 other members of the board and attempt to make appointments so
16 that the board's composition reflects a diversity of expertise.

17 (d) The Council may establish interagency agreements for the
18 purposes of contracting for executive, administrative, and other
19 related services, if necessary.

20 (e) (1) A member of the board or of the staff of the Council
21 shall not be employed by, a consultant to, a member of the board
22 of directors of, affiliated with, or otherwise a representative of, a
23 carrier or other insurer, an agent or broker, a health care provider,
24 or a health care facility or health clinic while serving on the board
25 or on the staff of the Council. A member of the board or of the
26 staff of the Council shall not be a member, a board member, or an
27 employee of a trade association of carriers, health facilities, health
28 clinics, or health care providers while serving on the board or on
29 the staff of the Council. A member of the board or of the staff of
30 the Council shall not be a health care provider unless he or she is
31 not compensated for rendering services as a health care provider
32 and does not have an ownership interest in a professional health
33 care practice.

34 (2) For purposes of this subdivision, "health care provider"
35 means a person licensed or certified pursuant to Division 2
36 (commencing with Section 500) of the Business and Professions
37 Code, or licensed pursuant to the Osteopathic Act or the
38 Chiropractic Act.

39 (3) No member of the board shall make, participate in making,
40 or in any way attempt to use his or her official position to influence

1 the making of, any decision that he or she knows or has reason to
2 know will have a reasonably foreseeable material financial effect,
3 distinguishable from its effect on the public generally, on him or
4 her or a member of his or her immediate family, or on either of
5 the following:

6 (A) Any source of income, other than gifts and other than loans
7 by a commercial lending institution in the regular course of
8 business on terms available to the public without regard to official
9 status aggregating two hundred fifty dollars (\$250) or more in
10 value provided to, received by, or promised to, the member within
11 12 months prior to the time when the decision is made.

12 (B) Any business entity in which the member is a director,
13 officer, partner, trustee, employee, or holds any position of
14 management.

15 (f) Each member of the board shall have the responsibility and
16 duty to meet the requirements of this title, the federal act, and all
17 applicable state and federal laws and regulations, to serve the public
18 interest of the individuals and small businesses seeking health care
19 coverage through the Council, and to ensure the operational
20 well-being and fiscal solvency of the Council.

21 (g) A board member shall not receive compensation for his or
22 her service on the board but may receive a per diem and
23 reimbursement for travel and other necessary expenses, as provided
24 in Section 103 of the Business and Professions Code, while
25 engaged in the performance of official duties of the board.

26 (h) There shall not be any liability in a private capacity on the
27 part of the board or any member of the board, or any officer or
28 employee of the board, for or on account of any act performed or
29 obligation entered into in an official capacity, when done in good
30 faith, without the intent to defraud, and in connection with the
31 administration, management, or conduct of this title or affairs
32 related to this title.

33 (i) (1) The board shall hire an executive director to organize,
34 administer, and manage the operations of the Council. The
35 executive director shall be exempt from civil service and shall
36 serve at the pleasure of the board.

37 (2) The board shall identify and fill other key executive
38 positions, as determined necessary by the board, who shall be
39 exempt from civil service to the extent permitted by law.

1 (3) The board shall set the salaries for the exempt positions
2 described in paragraphs (1) and (2) in amounts that are reasonably
3 necessary to attract and retain individuals of superior qualifications.
4 The salaries shall be published by the board and shall be posted
5 on the Internet Web site of the Council.

6 (j) The board shall be subject to the Bagley-Keene Open Meeting
7 Act (Article 9 (commencing with Section 11120) of Chapter 1 of
8 Part 1 of Division 3 of Title 2), except that the board may hold
9 closed sessions when considering matters related to litigation,
10 personnel, contracting, and rates.

11 100603. The Council shall, at a minimum, do all of the
12 following:

13 (a) Construct, manage, and maintain a marketplace for the
14 purchase of vision plans through participating carriers by qualified
15 individuals and qualified employers. The marketplace shall offer
16 full and complete carrier information to consumers, shall ensure
17 a secure purchase functionality, and shall allow enrollees and
18 prospective enrollees to obtain standardized comparative
19 information on the plans offered through the marketplace.

20 (b) Maintain an Internet Web site through which enrollees and
21 prospective enrollees of vision plans may obtain standardized
22 comparative information on the plans offered in the marketplace.

23 (c) Work cooperatively with the Exchange to establish a direct
24 link from the Internet Web site maintained by the Exchange to an
25 Internet Web site maintained by the Council to connect Exchange
26 consumers to the marketplace.

27 (d) Make the marketplace available to individuals without access
28 to the Internet.

29 (e) Determine the minimum requirements a carrier shall meet
30 to be considered for participation in the marketplace, and the
31 standards and criteria for selecting vision plans to be offered
32 through the marketplace that are in the best interests of consumers.
33 The board shall consistently and uniformly apply these
34 requirements, standards, and criteria to all carriers. In the course
35 of selectively contracting for vision coverage offered to qualified
36 individuals and qualified employers through the Council, the board
37 shall seek to contract with carriers so as to provide vision coverage
38 choices that offer the optimal combination of choice, value, quality,
39 and service. The requirements adopted pursuant to this subdivision
40 shall, at a minimum, include the following:

1 (1) A requirement that a carrier meet a minimum net asset
2 threshold as determined by the Council to ensure that it is both
3 well established and can demonstrate that it offers a proven model
4 for providing vision care coverage in California. The Council may
5 also consider the usefulness of setting a minimum annual premium
6 revenue as evidence of the soundness of the carrier.

7 (2) A requirement that a carrier have, and continuously maintain,
8 an established Internet Web site.

9 (3) A requirement that a carrier demonstrate to the Council
10 adequate vision care coverage networks sufficient to ensure
11 convenient geographic access to vision care in California.

12 (4) A requirement that a carrier demonstrate to the Council
13 adequate, multilingual consumer service and benefit delivery
14 capabilities.

15 (5) Any other requirements determined necessary by the board
16 based on input from health care consumer advocacy organizations,
17 representatives of the optometry and ophthalmology industries,
18 health insurers, and health care service plans.

19 (f) Require vision plans offered in the marketplace to do both
20 of the following:

21 (1) (A) Make available to the public, and the Insurance
22 Commissioner or the Department of Managed Health Care, as
23 applicable, accurate and timely disclosure of the following
24 information:

25 (i) Claims payment policies and practices.

26 (ii) Periodic financial disclosures.

27 (iii) Data on enrollment.

28 (iv) Data on disenrollment.

29 (v) Data on the number of claims that are denied.

30 (vi) Information on cost sharing and payments with respect to
31 any out-of-network coverage.

32 (B) The information required under subparagraph (A) shall be
33 provided in plain language.

34 (2) Permit individuals to learn, in a timely manner upon the
35 request of the individual, the amount of cost sharing, including,
36 but not limited to, deductibles, copayments, and coinsurance, under
37 the individual's plan or coverage that the individual would be
38 responsible for paying with respect to the furnishing of a specific
39 item or service by a participating provider. At a minimum, this
40 information shall be made available to the individual through an

1 Internet Web site and through other means for individuals without
2 access to the Internet.

3 (g) Provide for the operation of a toll-free telephone hotline to
4 respond to requests for assistance.

5 (h) Establish and make available by electronic means a
6 calculator to determine the actual cost of a vision plan for a
7 consumer.

8 (i) Conduct public education activities to raise awareness of the
9 availability of vision plans through the Council.

10 (j) Distribute fair and impartial information concerning
11 enrollment in coverage offered through the Council.

12 (k) Facilitate enrollment of qualified individuals and qualified
13 employers in vision plans offered through the Council.

14 (l) Provide referrals to any applicable office of health insurance
15 consumer assistance or health insurance ombudsman, or any other
16 appropriate state agency or agencies, for any enrollee with a
17 grievance, complaint, or question regarding a participating carrier,
18 coverage purchased pursuant to this title, or a determination by
19 the carrier or under that coverage.

20 (m) Provide information in a manner that is culturally and
21 linguistically appropriate to the needs of the population being
22 served by the Council.

23 (n) Undertake activities necessary to market and publicize the
24 availability of vision plans through the Council, ensuring clear
25 communication to consumers that federal subsidies are not
26 available for this coverage. The board shall also undertake outreach
27 and enrollment activities that seek to assist enrollees and potential
28 enrollees with enrolling and reenrolling in the coverage offered
29 by the Council in the least burdensome manner, including
30 populations that may experience barriers to enrollment, such as
31 the disabled and those with limited English language proficiency.

32 (o) Employ necessary staff.

33 (p) Assess a charge on the vision plans offered by participating
34 carriers through the marketplace that is reasonable and necessary
35 to support the development, operations, and prudent cash
36 management of the Council.

37 (q) Authorize expenditures, as necessary, from the fund to pay
38 program expenses to administer the Council.

1 (r) Keep an accurate accounting of all activities, receipts, and
2 expenditures, and annually publish a report concerning that
3 accounting.

4 (s) (1) Annually publish a report on the implementation and
5 performance of the Council functions during the preceding fiscal
6 year, that shall be made available to the public on the Internet Web
7 site of the Council.

8 (2) In addition to the report described in paragraph (1), the
9 Council shall be responsive to requests for additional information
10 from the Legislature, including providing testimony and
11 commenting on proposed state legislation or policy issues.

12 (t) Exercise all powers reasonably necessary to carry out and
13 comply with the duties, responsibilities, and requirements of this
14 act.

15 (u) Consult with stakeholders relevant to carrying out the
16 activities under this title, including, but not limited to, all of the
17 following:

18 (1) Health care consumers who are enrolled in vision plans.

19 (2) Individuals and entities with experience in facilitating
20 enrollment in vision plans.

21 (3) Representatives of small businesses and self-employed
22 individuals.

23 (v) Require participating carriers to regularly, as determined by
24 the Council, provide the Council with enrollment or disenrollment
25 data.

26 (w) Ensure that the Council provides oral interpretation services
27 in any language for individuals seeking coverage through the
28 Council and makes available a toll-free telephone number for the
29 hearing and speech impaired. The Council shall ensure that written
30 information made available by the Council is presented in a plainly
31 worded, easily understandable format and made available in
32 California's prevalent languages.

33 (x) Provide a choice of carrier in each region of the state.

34 (y) (1) Require, as a condition of participation in the Council,
35 carriers that sell vision products outside the Council to do both of
36 the following:

37 (A) Fairly and affirmatively offer, market, and sell all products
38 made available to individuals in the marketplace to individuals
39 purchasing coverage outside the Council. The products available

1 in the marketplace shall be the same individual product as offered
2 outside the Council.

3 (B) Fairly and affirmatively offer, market, and sell all products
4 made available to employers in the marketplace to employers
5 purchasing coverage outside the Council. The products available
6 in the marketplace shall be the same employer coverage products
7 as offered outside the Council.

8 (2) For purposes of this subdivision, “product” does not include
9 contracts entered into pursuant to Part 6.2 (commencing with
10 Section 12693) of Division 2 of the Insurance Code between the
11 Managed Risk Medical Insurance Board and carriers for enrolled
12 Healthy Families beneficiaries or contracts entered into pursuant
13 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
14 (commencing with Section 14200) of, Part 3 of Division 9 of the
15 Welfare and Institutions Code between the State Department of
16 Health Care Services and carriers for enrolled Medi-Cal
17 beneficiaries.

18 (z) Determine and approve cost-sharing provisions for carriers.

19 (aa) Standardize products to be offered through the Council.

20 (ab) Share information with relevant state departments,
21 consistent with the confidentiality provisions in Section 1411 of
22 the federal act, necessary for the administration of the Council.

23 (ac) Collect only that information from individuals or designees
24 of individuals as is necessary to administer the Council and
25 consistent with the federal act.

26 100605. The Council may do any of the following:

27 (a) Enter into contracts.

28 (b) Adopt an official seal.

29 (c) Sue and be sued.

30 (d) Receive and accept gifts, grants, or donations of moneys
31 from any agency of the United States, any agency of the state, any
32 municipality, county, or other political subdivision of the state.

33 (e) Receive and accept gifts, grants, or donations from
34 individuals, associations, private foundations, or corporations, in
35 compliance with the conflict-of-interest provisions to be adopted
36 by the board at a public meeting.

37 (f) Adopt rules and regulations as necessary.

38 100606. (a) A participating carrier shall submit to the Council
39 a written justification for a premium increase prior to implementing
40 the increase.

1 (b) A participating carrier shall utilize a standardized format
2 for presenting vision plan options to the Council.

3 (c) The Council shall refer questions from consumers regarding
4 eligibility and enrollment options for Medi-Cal or through the
5 Exchange to the Exchange.

6 (d) (1) The Council shall require a participating carrier to make
7 available to consumers and regularly update an electronic directory
8 of contracting vision care providers in the carrier's network.

9 (2) The Council may also require a participating carrier to
10 provide regularly updated information to the Council as to whether
11 a health care provider is accepting new patients for a particular
12 vision plan.

13 (3) The Council may provide an integrated and uniform
14 consumer directory of health care providers indicating which
15 participating carriers the providers contract with and whether the
16 providers are currently accepting new patients.

17 (4) The Council may establish methods by which health care
18 providers may transmit relevant information directly to the Council,
19 rather than through a participating carrier.

20 100607. (a) Notwithstanding any other provision of law, the
21 Council shall not be subject to licensure or regulation by the
22 Department of Insurance or the Department of Managed Health
23 Care.

24 (b) Carriers that contract with the Council shall have and
25 maintain a license or certificate of authority from, and shall be in
26 good standing with, their respective regulatory agencies.

27 100609. Records of the Council that reveal any of the following
28 shall be exempt from disclosure under the California Public
29 Records Act (Chapter 3.5 (commencing with Section 6250) of
30 Division 7 of Title 1):

31 (a) The deliberative processes, discussions, communications,
32 or any other portion of the negotiations with entities contracting
33 or seeking to contract with the Council, entities with which the
34 Council is considering a contract, or entities with which the Council
35 is considering or enters into any other arrangement under which
36 the Council provides, receives, or arranges services or
37 reimbursement.

38 (b) The impressions, opinions, recommendations, meeting
39 minutes, research, work product, theories, or strategy of the board

1 or its staff, or records that provide instructions, advice, or training
2 to employees.

3 100620. (a) The California Vision Care Access Trust Fund is
4 hereby created in the State Treasury for the purpose of this title.
5 Moneys collected pursuant to this title shall be deposited in the
6 fund. Notwithstanding Section 13340, all moneys in the fund shall
7 be continuously appropriated without regard to fiscal year for the
8 purposes of this title. Any moneys in the fund that are unexpended
9 or unencumbered at the end of a fiscal year may be carried forward
10 to the next succeeding fiscal year.

11 (b) Notwithstanding any other provision of law, moneys
12 deposited in the fund shall not be loaned to, or borrowed by, any
13 other special fund or the General Fund, or a county general fund
14 or any other county fund.

15 (c) The Council shall establish and maintain a prudent reserve
16 in the fund.

17 (d) The board or staff of the Council shall not utilize any funds
18 intended for the administrative and operational expenses of the
19 Council for staff retreats, promotional giveaways, excessive
20 executive compensation, or promotion of federal or state legislative
21 or regulatory modifications.

22 (e) Notwithstanding Section 16305.7, all interest earned on the
23 moneys that have been deposited into the fund shall be retained
24 in the fund and used for purposes consistent with the fund.

25 (f) (1) *State General Fund moneys shall not be used for any*
26 *purpose under this title.*

27 (2) *Any costs associated with the implementation of this title*
28 *shall be paid from the fund.*

29 100621. (a) The implementation of the provisions of this title,
30 other than this section and Sections 100601 and 100605, shall be
31 contingent on a determination by the board that at least two
32 hundred fifty thousand dollars (\$250,000) exists in the fund.

33 (b) The board shall provide notice to the Joint Legislative Budget
34 Committee and the Director of Finance when the financial
35 threshold set forth in subdivision (a) has been reached.

36 SEC. 4. The Legislature finds and declares that Section 3 of
37 this act, which adds Section 100609 to the Government Code,
38 imposes a limitation on the public's right of access to the meetings
39 of public bodies or the writings of public officials and agencies
40 within the meaning of Section 3 of Article I of the California

1 Constitution. Pursuant to that constitutional provision, the
2 Legislature makes the following findings to demonstrate the interest
3 protected by this limitation and the need for protecting that interest:

4 In order to ensure that the California Vision Care Access Council
5 is not constrained in exercising its fiduciary powers and obligations
6 to provide consumers with the most accessible and affordable
7 vision care benefits augmenting the benefits available through the
8 California Health Benefit Exchange, the limitations on the public's
9 right of access imposed by Section 3 of this act are necessary.

10 SEC. 5. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order to provide Californians an organized, transparent
15 marketplace for the purchase of affordable, quality vision care
16 coverage, augmenting and supplementing the essential health
17 benefits available through the California Health Benefit Exchange
18 in a manner consistent with evolving federal rules, regulations,
19 and official guidance implementing the federal Patient Protection
20 and Affordable Care Act (Public Law 111-148), as amended by
21 the federal Health Care and Education Reconciliation Act of 2010
22 (Public Law 111-152), it is necessary that this act take effect
23 immediately.